

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

HNTB CORPORATION

for

GYPSUM CREEK – PAWNEE TO WOODLAWN
FLOOD CONTROL AND STREAM RESTORATION

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and HNTB CORPORATION, party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

GYPSUM CREEK – PAWNEE TO WOODLAWN
FLOOD CONTROL AND STREAM RESTORATION
(OCA #660797)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing channel improvements on the Main Branch Gypsum Creek, from approximately East Kincaid Street to Windsor Street and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
- D. To save and hold CITY harmless against all judgments, damages and losses for injuries to persons or property arising from or caused by negligent errors, omissions or acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$100,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of professional services required by this agreement shall be based upon the ENGINEER'S actual costs and may be less than the estimated amount. Payment shall be full compensation for salary costs, expenses, overhead (overhead to be applied to straight-time salary cost only with premium overtime reimbursed at cost), profit, subcontracting and all other costs required in performing the work described herein. Overhead includes fringe benefits. The test of the allowability to be applied for this agreement shall be based on the provisions of the agreement and on the reasonableness of allocation of costs under generally accepted accounting principles and practices. Overhead costs shall be computed by multiplying an Overhead Factor times the actual salaries or wages paid to personnel assigned to the PROJECT. The Overhead Factor shall be 159.7 percent for the work required by this agreement. The multiplier factor including the overhead rate and the standard fifteen (15) percent profit is 2.987.

Total payments to the ENGINEER for the preparation of the work associated with the PROJECT shall include salary costs times a multiplier of 2.987. Total compensation, which includes subconsultants, if any, and reimbursable expenses will not exceed \$118,750.00 and shall generally be in accordance with the estimate provided as Exhibit A. Reimbursable expenses will be invoiced at a multiplier of 1.0. Profit shall not be applied to subcontractors, i.e., landscape architectural services, geotechnical services, etc.; or to direct expenses such as plan reproduction, CAD system services, etc.

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project progress report. The report will include progress accomplishments for the previous month, target progress for the next month, budget status, and project schedule for each task. A project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work is suitable for a schedule. Billings submitted during the progress of the work will be paid in the same manner set forth above. Accumulated partial payments for the PROJECT shall also be based on milestones in Exhibit A and shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement.

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
 2. Additional design services not covered by the scope of this agreement.
 3. Construction staking, material testing, inspection and administration related to the PROJECT.
 4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

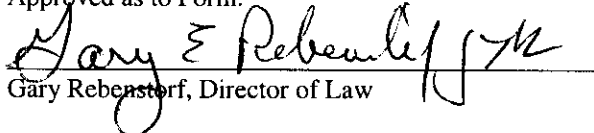
Carlos Mayans, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:



Gary Rebenstorf, Director of Law

HNTB CORPORATION



(Name & Title) VICE PRESIDENT

ATTEST:

**GYPSUM CREEK FLOOD CONTROL (PAWNEE TO WOODLAWN)
PRELIMINARY & FINAL DESIGN
SCOPE OF SERVICES & FEE**

Project Description:

The project includes channel improvements along Gypsum Creek from Pawnee Street to Woodlawn Avenue for flood control purposes. The improvements are anticipated to be primarily overbank grading above the Ordinary High Water Mark (OHWM) of the existing channel to increase the conveyance of the floodplain. Riprap stone or other pre-fabricated devices will also be used to stabilize the banks in select areas along Gypsum Creek. The floodplains will be reestablished with native grasses to limit resistance to flows, while also allowing the City to mow on an annual basis and keep maintenance minimal. Engineering services included in this scope and fee estimate include pick-up survey, finalizing hydraulic design and preliminary and final design for improvements as indicated in our Concept Plans and Preliminary Engineering Study as submitted to the City in July, 2006. We will also be placing a new curb inlet and run of storm sewer pipe on Wallace St. along with repairing a broken pipe just downstream of Mt. Vernon. Services for preparing permit applications and Conditional Letter of Map Revision (CLOMR) and final Letter of Map Revision (LOMR) are included. The LOMR submittal will include as-built surveying services under this contract. Geotechnical borings and analysis will be coordinated in these services, but paid for directly by the City under separate contract. Construction services such as shop drawing review, field monitoring, or field visits are not included. The City will prepare the final Contract Documents and Specifications and perform the bidding services.

Deliverables:

Final Hydraulic Report
Preliminary Plans (Field Check)
Final Plans and Special Provisions
CLOMR/LOMR submittals
Permit Applications (KDHE, 404 Nationwide, KS DWR)
Cost Estimates at Preliminary and Final Plans

Project Schedule:

Notice to Proceed: September 15, 2006
Finalize Hydraulic Report: November 1, 2006
Field Check Plans: December 15, 2006
Final Plans: April, 2007
Construction: Begin June, 2007
LOMR Submittal: February, 2008

PROJECT SCOPE & MAN-HOURS TASK	Project Manager	Proj. Eng. / Enviro Specialist	Engineer/ Landscape Arch.	Technician	Total
1) Public Involvement:					
- Public meeting (1) & preparation	8		2	4	14
- Coordinate public input with design	1		8		9
2) Hydraulic Analysis of Project Area:					
- Site reconnaissance			12		12
- Finalize hydraulic alternatives (include Fabrique Branch modifications from Public meeting)	2	4	16		22
- Finalize Engineering Report	1	4	16	8	29
3) Stream Stabilization:					
- stabilization	1	1	2		4
- Develop detailed typical sections		2	16	4	22
- Develop const. sequencing and methods for stabilization	1	2	16	2	21
- Design bank stabilization for sidewalk under Mt. Vernon Bridge		2	12	4	18
- Design bank stabilization at sanitary sewer siphon	1	2	12	4	19
- Assess and design plans to remove existing rubble at streams edge and replace with riprap in select locations		2	12	4	18
4) Landscaping					
- Selection of plantings for habitat and erosion control		1	16		17

PROJECT SCOPE & MAN-HOURS TASK	Project Manager	Proj. Eng. / Enviro Specialist	Engineer/ Landscape Arch.	Technician	Total
- Seeding rates and locations		2	20	8	30
5) Permitting:					
- Consult with COE, KS-DWR, KDHE, and KDWP		8	8		16
- Compile data necessary for permitting		28	20		48
6) Historical:					
- Coordinate w/ City Archeologist and State Historical Society		4	4		8
7) Geotechnical:					
- Coordinate borings and assess data	1	4	16	2	23
- Modifications to design based on Geotechnical Report	1	2	8	2	13
8) Prepare Preliminary Plan Documents:					
- Create Title Sheet		1	2	2	5
- Create Typical Sections Sheets		1	8	4	13
- Develop Survey Reference Sheet		1	4	2	7
- Create Plan Sheets (1"=50' scale, 4 sheets)	1	4	24	20	49
- Create Pipe Profiles		1	8	4	13
- Develop Seeding/Planting Plans		2	8	8	18
9) Prepare Final Plan Documents					
- Develop Special Provisions	1	2	24		27
- Prepare Construction Details	1	2	12	8	23
- Prepare Final Plans	1	2	16	12	31
- Prepare ROW/Easement Documents (6 tracts)	1	6	16	12	35
10) Quantities and Cost Estimate:					
- Preliminary	1	2	16		19
- Final	1	2	20		23
11) Prepare Hydraulic analysis Necessary for CLOMR Submittal					
- Prepare Effective 4-Frequency & Floodway Models	1	2	8		11
- Run Duplicate Effective 4-Frequency & Floodway models	1	2	2		5
- Prepare & Run Corrected Effective 4-Frequency & Floodway Models	1	2	8		11
- Run Existing/Pre-Project 4-Frequency & Floodway	1	4	32		37
- Run Revised/Project 4-Frequency & Floodway Models	1	4	32		37
12) Prepare Preliminary Floodplain & Floodway Maps with BFE's for City Review	1	2	20	40	63
13) FEMA CLOMR Submittal:					
- Prepare map revision forms	1	2	8		11
- Prepare final revised Floodplain/Floodway maps	1	2	8	8	19
- Prepare revised profiles and data tables	1	2	16	24	43
- Prepare hydraulic submittal report	2	4	24		30
- Respond to FEMA Questions	2	4	24		30
14) Survey Coordination:	1		8		9
15) General Coordination					
- FEMA coordination		1	4		5
- Utility Coordination		2	8	2	12
- Obtain necessary Title work		1	4		5
Review Meetings (assumes 2 people for 2 meetings in person, 2 conference calls)	20	20	4		44
16) Quality Control:	20		20		40
Total:	78	148	604	188	1018

PROJECT COST SUMMARY for TASKS 1-16

PERSONNEL	MAN-HOURS		RATE	TOTAL
Project Manager	78	@	\$165.00	\$12,870
Project Engineer/Environmental Specialist	148	@	\$120.00	\$17,760

PROJECT SCOPE & MAN-HOURS TASK	Project Manager	Proj. Eng. / Enviro Specialist	Engineer/ Landscape Arch.	Technician	Total
Engineer/Landscape Architect	604		@	\$80.00	\$48,320
Technician	188		@	\$60.00	\$11,280
Total Personnel:	1018				\$90,230
EXPENSES					
Water Resources Material, Supplies & Transportation					\$2,000
Title Searches (assumes 6 tracts)					\$1,800
Total Expenses:					\$3,800
Total Cost (Tasks 1-16), including Expenses =					\$94,030

ADDITIONAL SERVICES FOR LOMR (TASKS 17-19)

PROJECT SCOPE & MAN-HOURS TASK	Project Manager	Proj. Eng. / Enviro Specialist	Engineer/ Landscape Arch.	Technician	Total
17) Perform Hydraulic Analysis Updates Necessary for LOMR Submittal	2	8	24		34
18) Prepare Final Floodplain & Floodway Maps for City Review	1	2	8	16	27
19) FEMA LOMR Submittal:					
- Prepare map revision forms		1	4		5
- Prepare final revised Floodplain/Floodway maps	1	1	4	4	10
- Prepare revised profiles and data tables	1	2	12	12	27
- Prepare hydraulic submittal report	2	4	12	4	22
- Response to FEMA questions (Michael Baker Jr. Inc. is new FEMA Contractor for Kansas)	1	2	4		7
Total:	8	20	68	36	132

PROJECT COST SUMMARY for TASKS 17-19

PERSONNEL	MAN-HOURS		RATE	TOTAL
Project Manager	8	@	\$165.00	\$1,320
Project Engineer/Environmental Specialist	20	@	\$120.00	\$2,400
Engineer/Landscape Architect	68	@	\$80.00	\$5,440
Technician	36	@	\$60.00	\$2,160
Total Personnel:	132			\$11,320
EXPENSES				
Water Resources Material, Supplies & Transportation				\$200
Surveying subcontractor				\$13,200
Total Expenses:				\$13,400
Total Cost (Tasks 17-19), including Expenses =				\$24,720
Total Cost (Tasks 1-19), including Expenses =				\$118,750

- Assumptions:**
- The Hackberry archeological site will not be impacted by the project construction limits.
 - Permits will include Corp of Engineers 404 (Nationwide) permit, KS DWR Stream Obstruction Permit, and KDHE Land Disturbance Permit
 - Geotechnical borings and analysis will be paid for directly by the City.
 - Permitting will be based on construction staying above the ordinary high water mark and mitigation will not be required.
 - Sanitary sewer adjustments are for manhole elevation adjustments only.
 - Structural design is not included. (Assumes no retaining walls or gabions or impacts to existing bridges)
 - 10 full-size sets will be provided for the bidding process. All other printing are half size plots. The Contractor will be supplied 10 half size sets after award.
 - Utility coordination consists only of sending plans and correspondence. Meetings will be held by City Staff

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 - 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 - 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be

canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
- D. Exempted from these requirements are:
1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
 2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.